passed under the right of way of a steam railroad, under an agreement that on sixty-days' notice it would erect permanent undercrossings of substantial masonry. After the electric road had passed into the hands of a receiver, the railroad served the sixty-days' notice. The court *held* that the permission to cross the right of way was a mere license which the railroad could revoke at any time, and, since the railroad had not been made a party, the court would not authorize the receiver to issue certificates to erect the permanent improvements, but would leave the purchaser at the receiver's sale to assume the responsibility of making them.

Two important questions are here discussed. The court decided that the electric road had a mere license, and no easement in the property of the steam railroad, since no grant had been made by deed, without which no easement can exist. Cf. *White* v. *Railway Co.*, 139 N. Y. 24, 34 N. E. 887. This being so, would the construction by the electric railway company of the permanent undercrossings create an equitable estoppel which would operate to prevent a revocation of the license, on the ground that the licensee had entered upon the land of the licensor and expended thereon labor and money upon the faith of the license? The court deemed it unnecessary to answer this question, since the steam railroad had not been made a party to the action and would not be bound by any decision affecting its rights in the undercrossings, but cited with apparent approval *White* v. *Railroad Co.*, supra, which decided that no equitable estoppel would arise under such circumstances, "because it must be held that the licensee knew that the license gave him no interest in the land, and that he must rely upon the indulgence of the licenser, and if that be withdrawn, he must himself withdraw from the land; otherwise, it is said, the statute in regard to the creation and conveyance of interests in land would be in great part abrogated."

The second question discussed is the right of a receiver to issue certificates in payment for permanent improvements to the road, thus creating a lien on the property prior to that of the mortgagees. The court held that the purpose for which receiver's certificates may be issued is usually confined to *making necessary repairs* and *protecting the property as it is*. The propriety of every expenditure is to be judged by the necessity of making it in order to preserve the value of the property in the hands of the receiver. The generally recognized rule is that the original construction creditors have no superior equity. In *Wood* v. *Deposit Co.*, 128 O. S. 416, 9 Sup. Ct. 131, it was held that the doctrine of *Fosdick* v. *Schall*, 99 O. S. 235, applied to *operating expenses only*, and *not to a contract in the ordinary construction of the road*. Applying these doctrines to the case at bar, the court decides "that it has no power to impair the obligations of a mortgage contract by creating a prior lien, without the mortgagee's consent, unless it be in the exercise of an equitable power to preserve and protect the property, and that it has no power through its receiver to complete unfinished work or to erect new bridges or undercrossings under a pre-existing contract, beyond what is necessary for the preservation of the property of the corporation."

TRADES UNIONS—REFUSAL TO WORK WITH MEMBERS OF OTHER UNIONS—REFORM CLUB OF MASONS AND PLASTERERS, KNIGHTS OF LABOR OF CITY OF NEW YORK ET AL. v. LABORERS' UNION PROTECTIVE SOCIETY ET AL., 60 N. Y. Sup. 388 (Supreme Court, Special Term, New York County).—Motion to continue a preliminary injunction obtained against defendants, on the ground that the defendant's members refused to work with members of the plaintiff association, under circumstances where the natural effect of the expressed refusal would be to cause the dismissal of the latter class.

The court denied the motion and vacated the preliminary injunction, holding that such refusal of the defendants did not amount to a conspiracy to prevent an employment of the plaintiffs *under all circumstances*, and in the absence of instances of intimidation or of false statements as to the character of the laborers affected, the case disclosed nothing unlawful in the attitude of the defendants.

The court seems to infer that had the facts disclosed a conspiracy to prevent an employment of the plaintiffs *under all circumstances,* a permanent injunction would have been granted. Yet, if the defendants had sought to prevent all employment of plaintiffs, but had done nothing else to accomplish this purpose except refusing to work with them and inducing other workmen to likewise refuse, it is hard to see how this would have been an unlawful conspiracy. Certainly it would not if the leading English authorities are to be followed, for *Mogul S. S. Co.* v. *McGregor,* L. R., 1892, App. Cases 25, decides that the mere fact of *combination* does not make an act unlawful, and *Allen* v. *Flood,* L. R., 1898, App. Case 1, holds that a malicious purpose does not make an act unlawful, if the act in itself be legal. The act of refusing to work with other men is perfectly lawful in itself, even though there be behind it the malicious intent to prevent all employment whatsoever. It is persecution, but persecution by lawful means, which cannot be reached at law, according to the English doctrine, unless the unlawful element of intimidation appear.

In this case the plaintiffs asserted that intimidation could be inferred from the dismissal, and cited *Coons* v. *Chrystie,* 53 N. Y. Sup. 668, to support them, but the court held that case to have no application to the present facts. "In that case the suit was by the employer of laborers, whose business was damaged by the defendant union's acts in prohibiting its members from continuing their work; and it was held that the *coercion of the laborers by the union was apparent and sufficient* to sustain an action by the employer. In the case at bar, the *willingness of defendant's members to obey its orders is not placed in question,* and the effect of the defendant's acts upon the employers of the members of plaintiff association does not amount to unlawful coercion under the authorities.

For an extension of the doctrine of intimidation, see *Boutwell* v. *Marr,* 42 Atlan. Rep. 607 (Vt.), which holds that any association which obtains unanimous consent from its members to its action by means of a coercive penalty or by-law, is founded upon coercion, and that the united action of the association obtained by this coercive means is equivalent to actual intimidation employed by an unorganized body of men. An application of this doctrine to labor unions, some of which certainly make use of such a coercive penalty to obtain unanimity, might well supply the element of intimidation not apparent on the face of such proceedings as those discussed in this case.